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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NO. 423

SHAWKEE MANUFACTURING COMPANY
GLENSHAW GLASS COMPANY
McKEE GLASS COMPANY
GEORGE R. HAUB, Petitioners

v.

HARTFORD-EMPIRE COMPANY, Respondent

On Writ of Certiorari to the Third Circuit Court of Appeals for the Third Circuit

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

This case is before the Court upon a writ of certiorari to the third circuit court of appeals, petition therefor being granted December 13, 1943 (R. 107). The final judgment of that court under review here was entered June 30, 1943 (R. 105) and reported, *Hartford-Empire Co. v. Hazel-Atlas Co.*, and *Hartford-Empire Co. v. Shawkee Manufacturing Co.*, 137 F. 2d 764. The petition for certiorari was filed October 13, 1943.

The questions presented in the Shawkee case are the same as in the Hazel case except that in the instant case there is the additional question of whether or not the Bill of Complaint in the Shawkee case should be dismissed under the rule pronounced by this Court in *Keystone Driller Co. v. Excavator Co.*, 290 U. S. 240.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, 28 U.S.C., Section 347, as amended.

Statement of the Case

The *Shawkee* suit was brought by respondent (hereinafter called Hartford) May, 1933 charging infringement of the same Peiler patent No. 1,655,391 involved in the *Hazel* case although the Shawkee feeding method employing air impulse pressures was entirely different from the plunger method disclosed by the Peiler patent and employed by the defendant in the *Hazel* suit. The Bill of Complaint in the *Shawkee* suit referred to the favorable decision of the *Hazel* case holding the patent valid and infringed.

The trial court granted the motion for preliminary injunction on the basis of the favorable adjudication of the patent in the *Hazel* case which was confirmed on appeal, *Hartford-Empire Co. v. Shawkee et al.*, 68 Fed. 726, by the same judges that decided the appeal in the *Hazel* case.

After hearing on appeal, Shawkee had hearsay information that the Clarke article, referred to in the opinion in the Hazel case as the basis for reversing the trial court, was published at the instigation of Hartford's patent attorney, Hatch, and the matter was called to the attention of Judge Buffington by letter but having no proof other than that the article may have been inspired by Hartford no direct attack could be made on its authenticity. After the decision holding the Shawkee

feeding method to come under the Peiler patent, Shawkee petitioned for rehearing which was denied, (R. 16). Shawkee then petitioned this court for a Writ of Certiorari which was denied, 292 U. S. 640. Shawkee then petitioned the Third Circuit Court of Appeals for leave to file a Bill of Review (R. 16) which was denied and this Court again denied a Petition for Writ of Certiorari, 293 U. S. 600.

In the summer of 1941, the Government in the trial of an antitrust case in Toledo, Ohio, United States v. Hartford et al., now on appeal to this Court, produced evidence concerning the Clarke article, which had been obtained from the secret files of the Hartford and Owens companies, and which proved its fraudulent origin and nature.

The Shawkee and Hazel companies promptly moved to present this evidence to the Third Circuit Court of Appeals, filing their respective petitions in Octobe. (Shawkee) and November (Hazel), 1941.

These petitions were for leave to file Bills of Review in the District Court, to set aside the decisions of the Third Circuit Court of Appeals, adverse to petitioner, because of the fraud practiced by the Clarke article. In December, 1941, the court said, *Hartford v. Hazel* and *Hartford v. Shawkee*, 125 F. 2d 976, 977:

> "In view of the fact that it is alleged that fraud was practiced upon this court rather than upon the court below, this court will adopt the practice followed by the Circuit Court of Appeals for the Second Circuit in the companion cases of Art Metal Works, Inc. v. Abraham & Straus, Inc., 107 F. 2d 940 and 944, certiorari denied, 308 U. S. 621, 60 S. Ct. 293, 84 L. Ed. 518, and itself pass upon the

question of whether the mandates of this court should be recalled and the cases reopened. Accordingly the prayers of the petitions as framed are denied but leave is granted to the petitioners to amend the prayers and to petition this court to set aside the judgments heretofore entered in this court, on the ground of fraud. The plaintiff-appellant will then reply to the petitions for review as amended and the questions involved will be heard and determined by this court."

The petitions were accordingly amended and filed, the cases were reargued in February, 1942, and on June 30, 1943, the court below filed the opinion (R. 79) which is under review here.

Specification of Errors

The Circuit Court of Appeals for the Third Circuit erred in holding

1. That it lacked power to set aside its decree obtained by fraud after the end of the term at which the mandate was dispatched.
2. That the accredited contents quoted by Judge Buffington from the false Clarke article did not affect the Court's judgment.
3. That the newly discovered evidence adduced at the trial of the Government Anti-trust suit does not qualify as after discovered evidence.
4. In failing to vacate its decree and dismiss the bill under the ruling of this Court in Keystone Driller Co. v. Excavator Co., 290 U. S. 240.

ARGUMENT

Petitioners contend that the Court of Appeals below had power and should have set aside its judgment in both the *Hazel* case and the *Shawkee* case and to order dismissal of the bill of complaint in the *Shawkee* case on the ground that its decisions were procured by fraud upon the Patent Office and the Court.

POINT I

The Motive for Publishing the Clarke Article.

The purpose in preparing and publishing the Clarke article was explained by Carter in a letter written to the President of the Owens Bottle Company (R. 7) wherein it was referred to as the Hatch article because Hatch, a patent attorney for respondent, had written it. Carter said:

> "He has prepared it with the idea of getting it printed under the name of some apparently unprejudiced authority, and then calling attention of the Patent Office Examiner to the article as published, in the belief that the Examiner will thereby be influenced to a more favorable consideration of Hartford's broad claims."

The Patent Office Examiner was being prepared for the Clarke article in an Amendment filed June 23, 1926 (R. 8), three weeks prior to publication of the article in the National Glass Budget. The amendment stated under the Remarks:

> "For the Examiner's information, a discussion of the subject matter of this case is being prepared, with affidavits and exhibits, showing the wide-

spread recognition by the glass art of the novelty and great value of the feeders claimed herein * * *."

By an amendment filed October 12, 1926 (R. 8) after publication of the Clarke article under Remarks it was stated:

"The article published in the National Glass Budget for July 17, 1926 by William P. Clarke, President of the American Flint Glass Workers Union, is an interesting account of the introduction of automatic glass machinery and its reception by the labor unions * * *."

The remarks to the Patent Office Examiner then referred to the chart of the Clarke article stating:

"* * * The curves shown on this chart are interesting as showing that the production on the Owens machines fell off at just about the time when the suspended charge feeders got under way * * *."

"* * * The conclusion of the whole matter is, that the suspended charge feeder has accomplished a revolution in the glass art. It is submitted, therefore, that these claims are entitled to favorable consideration, which is respectfully solicited."

At the time the article was published the broad claims of the Peiler application then before the Patent Office were under rejection. This was after respondent had acquired or had control of numerous interfering applications and after the Patent Office interferences had been terminated by order of the Commissioner of

Patents. The District Court in the *Hazel* case with reference to this particular period of the patent office prosecution of the Peiler Patent said, 39 F. 2d, 111, 117:

"The application of the patent in suit was, at various times, in interferences with applications filed by Bridges, Ferngren, Howard, Lott, Miller, Steimer, and Tucker and Reeves, all of whom had filed applications prior to that of Peiler. While enlightening, space does not allow any extended review of these proceedings in the Patent Office. The most important of these interferences were brought to an end by the order of the Commissioner after plaintiff had acquired or had control of the contending applications, one after another. Prior to the withdrawal of the interferences by counsel the Patent Office had steadfastly rejected all claims having approximately the same subject matter of those in suit. After the interferences had all been ended, the claims in the patent in suit were all withdrawn. *After rewriting, one hundred and four new claims (many of them rewording of original claims) were presented, and after a considerable time and much controversy the patent was allowed.* Before allowance however, the Primary Examiner had rejected all claims, and his action had been supported by the Examiners in Chief. A rehearing was granted, and Peiler, after cancelling a number of claims, filed affidavits to show that he had completed his invention prior to November 14, 1917. That the Patent Office intended to grant any such broad monopoly as is claimed by plaintiff's counsel in the suit is incredible, if any evidentiary weight is to be attributed to various disclaimers

filed by Mr. Peiler with the approval of the plaintiff, or filed directly by the plaintiff."*

POINT II

The Nature of the Clarke Article.

The statement by Hatch to Carter, letter dated April 19, 1926 (R. 10):

> "* * * Of course, I think you understand that the whole object of the article is to make an excuse to get the production curves and a few statements in regard to gob feeding into print."

is, we believe, comprehensive of the character of the article. Its spurious authorship represents it as based upon the proceedings of the Bottle Blowers' Association and it is sounded in the historic alarm of labor over advancement in labor saving machinery. The Clarke article has still another significance which is most important and which as appears from the opinion in the court of appeals in the *Hazel* case was persuasive in setting aside the prior art upon which the district court had denied respondent's claim for a pioneer invention. After reviewing the prior art patents to Brooke, Brookfield, Steimer, Ferngren, Wilson, Morrison, Bowman, Harding, Howard, Bridges, Tucker and Reeves, and notably Hitchcock, the trial court said, 39 F. 2d 111, 116

> "Other patents and uses might be cited to sustain our conclusion that the Peiler patent claims are not entitled to broad construction."

Yet, with all of these prior patents and uses the Clarke article speaks of only one, namely, the Brooke patent.

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* Italics ours, unless otherwise stated.

POINT III

The Clarke Article Is Admittedly False by Omission of Reference to Other Prior Art Known to Hartford.

The Clarke Article presents the Brooke flow patent 723,983 as the only prior attempt of feeding separate mold charges to ware forming machines. Respondent's predecessor, the Hartford-Fairmont company acquired the patents to Hitchcock, Numbers 805,068 and reissue 13,929 before their expiration in 1922 and asserted them against the Berney Bond Glass Company, which employed the Howard feeders, in a suit in the Western district of Pennsylvania in 1921. At the same time it had also brought suit against the United States Glass Company in the western district of Pennsylvania reported 2 F. 2d 109, 111. As appears from that decision, the Hitchcock patents were asserted to be for suspended charge feeders. The Brookfield patent No. 883,779 under which the defendant was operating was known to be in commercial operation and successfully feeding suspended gobs or charges to ware forming machines. Omission of reference to these feeding methods and Hartford's own prior art patents establishes the intentional falsity of the Clarke article.

Furthermore Carter's letter to Hatch (R. 10) questioning the production curves of the Clarke article and Hatch's explanation to Carter (R. 11) show the production curves to be based on minimum royalties, which had to be paid regardless of any production, and upon an incorrect number of Owens' machines in use which were intentionally misrepresented in the curves (R. 10). The curves were represented to both the Patent Office (R. 8) and the Court of Appeals in the Hazel case (R. 98) as

establishing the revolutionary character of the Peiler invention when Hartford knew they were false.

POINT IV.

The Clarke Article Did Affect the Court's Decision in Both the Hazel and the Shawkee Cases.

The Clarke article begins with the statement

> "There is an apparent conflict of interest between the manufacturers and organized labor whenever new labor saving machines are introduced into a business."

The effect of this statement on the judgment of the court in the Hazel case on appeal is apparent from the opinion. Judge Buffington said 59 F. 2d 401:

> "As we have indicated, the labor organizations were vitally interested in the supplanting of hand blowing by mechanical blowers, and we naturally look to the proceedings of their several organizations to find what machine blowers were of practical working capacity and ones which they regarded as supplanting lung blowing. *We can therefore, and do, rely on their opinion in that regard,* for successful machine blowers largely spelled ending of the supremacy of lung blowing. In an article prepared by the president of one of these unions, he said:"

The court then further referred to the Clarke article as disposing of the question of what was prior art to Peiler. The court said:

> "* * * In point of fact the independent operators who were threatened with annihilation by the Owens device, found nothing in this swarm of al-

leged patent anticipations to relieve them, *and the labor conventions asserted, as they did, that none of these alleged prior devices had any effect* * * *."

It is to be noted that the Clarke article did not, as might be assumed by the above quoted statement of the opinion, make reference to the prior art patents or uses referred to in the opinion of the trial court 39 F. 2d 111, with the exception of the Brooke patent.

There is no other statement in Judge Buffington's opinion from which it might be inferred that he had considered the prior art of record on the merits. The opinion evidences he was persuaded to disregard the prior art because of his reliance upon the Clarke article as coming from a disinterested and hostile source having knowledge of the facts.

The following significant statement by Judge Buffington may be regarded as conclusive on this point (P. 406):

> "Accordingly, we take these Owens and Brooke devices as constituting the advance of the art in the machine glass blowing of bottles."

POINT V

The Evidence of the Fraudulent Character of the Clarke Article Was Not Sooner Available to Hazel or Shawkee.

As stated in the petition of the companion case of the Hazel-Atlas Glass Company, after the decision by the court of appeals 59 F. 2d 399, Hazel began to investigate the authenticity of the Clarke article, but four days after that decision Hatch had interviewed Clarke

and shortly thereafter Clarke asked for $10,000 and was paid $8,000.00 in cash by Hatch (R. 17, 46). This corruption of Clarke foreclosed every avenue of investigation and it was not until the evidence of the fraud was established through the private correspondence files of Hartford and the Owens-Illinois Glass Company in the trial of the suit entitled United States v. Hartford-Empire Company et al. now before this court on appeal, that proof of the fraud was available to Hazel and Shawkee who immediately made application to the court of appeals below for leave to file a bill of review in the district court.

POINT VI

The Fraudulent Use of the Clarke Article in the Hazel Case Requires Dismissal of the Bill of Complaint in the Shawkee Case.

In *Keystone Driller Company v. Excavator Company*, 290 U. S. 240, quoting with approval the language of Mr. Justice Story, this court said:

> "'It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into court with clean hands. He must be frank and fair with the court, nothing about the case under consideration should be guarded, but everything that tends to a full and fair determination of the matters in controversy should be placed before the court.' Story's Equity Jurisprudence, 14th ed., §98."

Further in the same case, P. 245, the court said:

> "This court has declared: 'It is a principle in chancery, that he who asks relief must have acted

in good faith. The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity.' Bien v. Heath, 6 How. 228, 247."

The facts and circumstances of the Shawkee case are similar to those in the Keystone case in which the court said, P. 246

"Had the corruption of Clutter been disclosed at the trial of the *Byers* case, the court undoubtedly would have been warranted in holding it sufficient to require dismissal of the cause of action there alleged for the infringement of the Downie patent. Promptly after the decision in that case, plaintiff brought these suits and immediately applied for injunctions *pendente lite*. It used the decree of validity there obtained in support, if not in deed as the basis, of its applications. And plaintiff's misconduct in the Byers suit remaining undisclosed, that decree was given weight on the motions for preliminary injunctions * * * The use actually made of that decree is sufficient to show that plaintiff did not come with clean hands in respect of any cause of action in these cases."

The bill of complaint in the Shawkee case has three paragraphs numbered 9, 10 and 11 which assert the decision in the Hazel case as establishing validity and infringement. They are as follows:

"9. The said Peiler patent No. 1,655,391 has been held valid and infringed, as to all of its claims there in suit, (to wit, all of the sixty claims of said patent except claims 2, 3, 5, 6, 7, 24 to 31 both

inclusive, 51, 52 and 60), by a decision of the United States Circuit Court of Appeals for the Third Circuit, in a vigorously contested suit of the plaintiff herein, Hartford-Empire Company, against Hazel-Atlas Glass Company. The said suit was tried in open court in the United States District Court for the Western District of Pennsylvania before Judge Gibson of this Court, the trial occupying several weeks, during which much testimony was taken. The said suit was further vigorously contested upon appeal to the United States Circuit Court of Appeals for the Third Circuit, and on May 5, 1932, the said Circuit Court of Appeals, in an opinion by Judge Buffington, held the patent there and here in suit to be valid and infringed as to all the claims there in suit, including all the claims which are in suit herein. The said opinion is reported in 59 Federal Reporter, Second Series at page 399. A certified copy of the said decision is attached hereto."

"10. Plaintiff, in its charge of infringement herein, relies upon claims 8, 10, 11, 12, 13, 14, 46 of said Peiler patent No. 1,655,391, which claims were all in suit and were all held valid and infringed by the United States Circuit Court of Appeals for the Third Circuit in the said suit of Hartford-Empire Company v. Hazel-Atlas Glass Company, 59 Fed. (2d) 399."

"11. Plaintiff is informed and believes, and therefore avers, that the defendants' glass feeding method, herein complained of and charged to infringe, is, so far as concerns the inventions of the said claims 9, 10, 11, 12, 13, 14, 46 here in suit, the same in all material and substantial respects as the

defendants' Hazel-Atlas Glass Company glass feeding method held by the United States Circuit Court of Appeals to infringe said claims as aforesaid."

The preliminary injunction was granted and on appeal, 68 F. 2d 726, the court said:

"The patent involved was considered by this court in Hartford-Empire Company v. Hazel-Atlas Glass Company reported in 59 F. 2d 399, 413. Reference thereto obviates needless restatement of the art * * * Accordingly we held in the Hartford-Empire v. Hazel-Atlas case that the claims of the Peiler patent there in suit were broad enough to cover the Hazel-Atlas device. For the same reasons we hold that the claims of the patent here in suit are broad enough to cover the defendants' device."

Hartford also employed the Hazel decision in this Court in reply to Shawkee's petition for Certiorari. In a brief for respondent, dated April 23, 1934, in opposition to petition for Writ of Certiorari, Hartford said, (P. 3):

"The history of the invention, what it has accomplished in the commercial and practical art, and the benefits to the glass industry which have resulted from it, are described in the opinion of the Circuit Court of Appeals for the Third Circuit in Hartford-Empire Co. v. Hazel-Atlas Glass Co., 59 F. 2d 399, the prior suit on this same Peiler patent. This prior case was decided in May, 1932, and the patent in suit including the claims now in issue, was held valid and infringed by a machine and method employed by the Hazel-Atlas Glass Co. In the district court, four weeks were consumed in the trial of that case, the prior art was thoroughly canvassed

and explained, as were also the merits of the invention covered by the patent here in suit and the commercial and practical successes which had attended its presentation to the glass making industry. • • •"

(P. 5)

"An application for a preliminary injunction was made, based upon the fact that the patent had been held valid by the Circuit Court of Appeals for the Third Circuit."

(P. 11)

"Under the circumstances detailed in Section 1 of this summary, it would be manifestly unjust to respondent to now have the validity of the patent determined by this Court on a record which was prepared for use in a proceeding in which validity could not be raised in the absence of new evidence affecting validity, especially in view of the fact that in the *Hazel-Atlas* case, where the validity of the patent was sustained, there was a very full and complete record."

(P. 23)

"In the Hazel-Atlas case the commercial art which preceded Peiler, and its shortcomings and limitations, were fully explained by competent experts *and practical workers in the glass industry*, as was also the great advance that the Peiler invention had made and the difficulties which it had solved."

It must be concluded that the judgment in the Shawkee case was obtained by Hartford's repeated reference to and reliance upon the favorable decision in the Hazel-Atlas case which the court below held as controlling on the question of validity and infringement.

Because the Hazel decision was procured by the use of the fraudulent Clarke article plaintiff did not come with clean hands in respect to this cause of action and the bill of complaint should be dismissed under the ruling of this Court in the Keystone Driller case (*supra*).

POINT VII

The Court Below Had Power to Set Aside Its Judgment and Order Procured by Fraud.

When the evidence of the fraud of the Clarke article was first presented to the court below, petitioner sought leave to file a bill in the district court in the nature of a bill of review. The court of appeals denied the petition on the ground that the fraud was practiced on that court and granted petitioners' leave to amend the petition to move the court to set aside its judgment following the practice of the circuit court of appeals for the second circuit in *Art Metal Works, Inc. v. Abraham & Straus*, 107 F. 2d 940, 944, certiorari denied 308 U. S. 621. By now holding that application should be made to the district court for leave to file a bill of review the court of appeals in effect reversed itself. In the dissenting opinion, Judge Biggs said, R. 91:

> "As to our jurisdiction to receive these petitions and to pass upon the matters raised by them, I am not unmindful of the fact, as I have indicated, that such bills or petitions are ordinarily presented to the court below upon grant of leave to do so by the appellate tribunal, but the apparent facts in the cases at bar bear an analogy to the circumstances which were before the Circuit Court of Appeals for the Second Circuit in Art Metal Works

v. Abraham & Straus, 107 F. (2nd) 940 and 944, cert. den. 308 U. S. 621.

"The pertinent facts in the Art Metal Works cases are as follows: One of the members of that court had been corrupted. The tribunal thereupon reconstituted itself, and after applications similar in form to those before us had been filed with it, itself reheard the cases. The fraud was (fol. 67) practiced upon the circuit court of appeals and therefore that court heard the matters raised by the petitions and disposed of them. The court acted to protect the integrity of its appellate jurisdiction."

We believe that, as stated by Judge Biggs,

"The significant fact is that the fraud was worked upon the appellate tribunal"

and the *Art Metals* Case is authority for both the question of an appellate court having jurisdiction where the fraud is practiced upon that tribunal and the question that its judgment and order may be recalled after the term in which it was entered had expired.

The House of Lords' decision quoted by the circuit court of appeals in *Winslow v. Staab,* 70 F. 2d 708, Certiorari denied; *Commercial Trust Company of New York v. United States,* 293 U. S. 584, is in point on the question of an appellate tribunal having power to discharge its orders after term to prevent its own decisions from being made the machinery for effecting a fraud.

In *United States v. Throckmorton,* 96 U. S. 61, and *Marshall v. Holmes,* 141 U. S. 589, this Court decided that judgments obtained by fraud may be set aside after the term in which the judgments were entered had expired. In the *Throckmorton* case the court held that

fraud vitiates judgments where the fraud was practiced directly upon the party seeking relief against the judgment or decree, if by the fraud the party has been prevented from presenting all his case to the court.

In the *Shawkee* case, Hartford's reference to the favorable decision in the *Hazel* case, undoubtedly foreclosed inquiry by the court of appeals into the prior art upon which Shawkee relied in its use of the air feeder. Shawkee was thereby prevented from presenting all its case to the court and because, as now appears, the Hazel decision was procured by fraud, its use in foreclosing a consideration of the Shawkee defense on the merits is such a fraud as vitiates the judgment within the rule of the *Throckmorton* case.

The case at bar does not fall within the exception noted in the *Throckmorton* case that a judgment will not be set aside if founded on a fraudulent instrument, or perjured evidence or for any matter which was actually presented and considered in the judgment assailed. The nature of the fraudulent preparation and use of the Clarke article has never before been presented to any tribunal and the question before the court is not alone whether the Clarke article is a fraudulent instrument but whether the manner of its use is a fraud upon the court.

In *Marshall v. Holmes,* 141 U. S. 589, relief was granted, P. 601:

> "* * * by reason of the fact, distinctly alleged, that some of the necessary proof establishing the forgery of the letter was discovered after the judgments at law were rendered, and after the legal delays within which new trials could have been obtained, and could not have been discovered by her sooner."

Proof of the authorship and character of the Clarke article could not have been discovered by petitioners before the Government Anti-trust suit in 1941 and because that proof establishes the fraudulent character of the Clarke article we believe that under the ruling of *Marshall v. Holmes* the court below had power to grant relief.

The decisions of the Circuit Court of Appeals uniformly hold that a judgment obtained by mistake or misrepresentation may be annulled after the term has ended. *Winslow v. Staab*, 242 F. 426 (CCA 2); *United States v. Sterling et al.*, 70 F. 2d 708 (CCA 2); *In re New England Oil Refining Company et al.*, 9 F. 2d 344 (CCA 1); *United States ex rel. Fisher v. Williams*, 67 F. 384 (CCA 8).

The Circuit Court of Appeals for the Third Circuit therefore erred in deciding that it lacked the power to vacate its order after the term had expired.

CONCLUSION.

The history of Hartford's patent situation reflects a well laid plan to establish and perpetuate a monopoly in the feeding of glass. It began with the acquisition and assertion of the Hitchcock patents by Hartford's predecessor, The Hartford-Fairmont Company reported in *Hartford-Fairmont Co. v. United States Glass Company*, 2 F. 2d 109, followed by the acquisition of all other gob feeding patent applications and devices pertaining to suspended gob feeding as found by the court in *Hartford-Empire Company v. Hazel-Atlas Glass Company*, 39 F. 2d 117.

After Hartford succeeded in obtaining allowance of the broad claims in the Peiler plunger patent in the Patent Office by use of the Clarke article and by use of the same article obtained a favorable judgment against the Hazel-Atlas Glass Company, 59 F. 2d 399, it employed that judgment in the *Shawkee* case to bring within the dominance of its said patent the air pulsator suspended charge feeding principle of the old Hitchcock patents, *Hartford-Empire Co. v. Shawkee et al.*, 68 Fed. 2d 726. Hartford then extended its monopoly of suspended charge feeding by bringing suit against the Commissioner of Patents, *Hartford-Empire Co. v. Coe*, 87 F. 2d 741, where it again relied upon the favorable decision which it had obtained in the *Hazel* case referred to by the court (P. 742).

> "* * * The appellant company has been involved in a number of suits in connection with these Peiler patents, and special stress is laid by appellant on the case of Hartford-Empire Co. v. Hazel-Atlas Glass Co. (CCA3d) 59 F. 2d 399 * * *.".
>
> "* * * In the Hazel-Atlas case, the court paid a great tribute to Peiler for revolutionizing the art and supplying an 'urgent and desperate need' of the bottle manufacturing industry."

As the result of that litigation three additional patents were issued to Hartford in 1937. The Clarke article was, therefore, the key to Hartford's patent monopoly which in its effective scope is dependent upon a fraud.

By these Patent Office and suit tactics, Hartford has extended a patent monopoly for suspended charge feeding from 1905, the date of issue of its early Hitchcock patents to 1954, the date of expiration of the 1937 patents and has exacted millions of dollars from the

industry (R. 52). Whatever the outcome of the Government Anti-trust suit now on appeal before this Court, Shawkee and Hazel are nevertheless under injunction against owning or operating any prior art suspended charge feeding apparatus or method unless the judgments below are annulled.

The decision below should be reversed and the case remanded for such further relief as the premises and the equity of the case may require and to the Court may seem just and proper.

Respectfully submitted,

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